

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILLIAM B.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-5650 JHC

**ORDER AFFIRMING AND  
DISMISSING THE CASE**

Plaintiff seeks review of the denial of his application for Supplemental Security Income (“SSI”). Plaintiff contends the ALJ erred by rejecting his symptom testimony and the medical opinion of Michael A. Slentz, PA-C, and by improperly assessing his residual functional capacity (“RFC”). Dkt. # 20. As discussed below, the Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

**I  
BACKGROUND**

Plaintiff is 39 years old, has at least a high school education, and has worked as an electronics technician, biomedical technician, and security guard. Admin. Record (“AR”) 23. In March 2019, Plaintiff applied for Disability Insurance Benefits (“DIB”) and SSI, alleging disability as of November 1, 2017. AR 72, 83. Plaintiff’s applications were denied initially and

on reconsideration. AR 80, 91. The ALJ conducted a hearing in December 2020. AR 31–68. During the hearing, Plaintiff amended his alleged onset date to October 24, 2019. AR 39–40. To receive DIB, a claimant must establish disability on or prior to his or her date last insured. *See* 20 C.F.R. § 404.131. Plaintiff's date last insured is September 30, 2019, so by amending his alleged onset date, Plaintiff voluntarily withdrew his DIB application. AR 15, 39–40. On July 2, 2021, the ALJ issued a decision finding Plaintiff not disabled from his amended alleged onset date through the date of the decision. AR 12–24.

## II THE ALJ'S DECISION

Using the five-step disability evaluation process,<sup>1</sup> the ALJ found:

**Step one:** Plaintiff has not engaged in substantial gainful activity since November 1, 2017.

**Step two:** Plaintiff has the following severe impairment: degenerative disc disease of the lumbar spine.

**Step three:** This impairment does not meet or equal the requirements of a listed impairment.<sup>2</sup>

**Residual Functional Capacity:** In relevant part, Plaintiff can perform light work, except that he requires a cane to ambulate, and he is unable to climb ladders, ropes, or scaffolds. Plaintiff is able to occasionally stoop, crawl, and climb stairs or ramps.

**Step four:** Plaintiff cannot perform past relevant work.

**Step five:** As there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, Plaintiff is not disabled.

AR 18–24. The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the Commissioner's final decision. AR 1–5.<sup>3</sup>

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<sup>1</sup> 20 C.F.R. § 416.920.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

<sup>3</sup> This order omits procedural history irrelevant to the outcome of the case.

### III DISCUSSION

The Court may reverse the ALJ's decision only if it is legally erroneous or unsupported by substantial evidence of record. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). The Court must examine the record but cannot reweigh the evidence or substitute its judgment for the ALJ's. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When evidence is susceptible to more than one interpretation, the Court must uphold the ALJ's interpretation if rational. *Ford*, 950 F.3d at 1154. Also, the Court "may not reverse an ALJ's decision on account of an error that is harmless." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

#### A. Plaintiff's Symptom Testimony

Plaintiff testified he cannot work due to lower back pain that radiates to both of his legs.<sup>4</sup> AR 46–47. He explained that due to back issues, he uses a cane to walk, can be on his feet for only 10 to 15 minutes, and spends most of his days laying down flat on his back. AR 49. He also stated that due to back issues, he can sit for only 15 to 20 minutes. AR 50. Plaintiff also testified he has numbness in his hands that affects his ability to perform household chores. AR 47, 51–52. He explained that he has undergone steroid injections and physical therapy and have found them to be somewhat helpful. AR 47–49.

When, as here, an ALJ determines a claimant has presented objective medical evidence establishing underlying impairments that could cause the symptoms alleged, and there is no

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<sup>4</sup> Plaintiff also testified to having mental health symptoms, but because he challenged only the ALJ's evaluation of his physical health symptoms in his Opening Brief, the Court does not address the ALJ's evaluation of the mental health symptoms. See *Carmickle v. Commissioner, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to address an ALJ's finding because the plaintiff "failed to argue th[e] issue with any specificity in his briefing").

1 affirmative evidence of malingering, the ALJ can discount the claimant's testimony as to  
2 symptom severity only by providing "specific, clear, and convincing" reasons supported by  
3 substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). "The standard  
4 isn't whether our court is convinced, but instead whether the ALJ's rationale is clear enough that  
5 it has the power to convince." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

6 In this case, the ALJ first rejected Plaintiff's testimony because of its inconsistency with  
7 the objective medical evidence, namely findings of normal strength and normal gait. AR 21.  
8 Plaintiff says the ALJ's reasoning is erroneous because his testimony focused on  
9 pain. Dkt. # 20 at 3. But objective medical evidence is a factor the ALJ may consider in  
10 analyzing a claimant's credibility. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005).  
11 Further, "[w]hen objective medical evidence in the record is *inconsistent* with the claimant's  
12 subjective testimony, the ALJ may indeed weigh it as undercutting such testimony." *Smartt*, 53  
13 F.4th at 498. Here, the ALJ reasonably found Plaintiff's exertional, standing, and walking  
14 limitations, and overall back pain, are not as severe as he says, given that his physical  
15 examinations revealed normal strength with his cervical and lumbar spine, as well as normal gait.  
16 AR 21 (citing AR 715–16, 725, 750–51, 767). Thus, in rejecting Plaintiff's testimony for this  
17 reason, the ALJ did not err.

18 The ALJ also found Plaintiff's testimony inconsistent with Dr. Robinson's evaluation,  
19 explaining that the doctor "seem[ed] to suggest that there are extraneous factors that would  
20 enable the claimant to work despite his back pain." AR 21 (citing AR 722–26). The ALJ's  
21 reading of Dr. Robinson's evaluation is reasonable. Dr. Robinson observed Plaintiff had issues  
22 "common in patients with chronic pain," and his epidural injections may not be as beneficial  
23 given Plaintiff has not returned to work, but he also found Plaintiff had no focal weakness in

1 either of his upper extremities and full strength in both of his lower extremities. AR 723, 725.  
2 He further stated Plaintiff is “extremely strong, so it [was] not easy to identify mild weakness.”  
3 *Id.* Dr. Robinson further wrote that Plaintiff “might benefit from vocational counseling so that  
4 he can find work that is not terribly demanding physically.” AR 723. He also observed that  
5 Plaintiff must address his need for psychiatric intervention if he is to get “substantial functional  
6 benefit.” *Id.* Dr. Robinson’s examination findings and impressions, taken altogether, indicate he  
7 did not find Plaintiff to be as limited as alleged. Thus, in rejecting Plaintiff’s testimony on this  
8 basis, the ALJ did not err.

9 Finally, the ALJ rejected Plaintiff’s testimony based on his reported activity. AR 21. An  
10 ALJ may reject a plaintiff’s symptom testimony based on their daily activities if they contradict  
11 their testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*, 885  
12 F.2d 597, 603 (9th Cir. 1989)). The evidence the ALJ relied on states Plaintiff “developed an  
13 exercise program including yoga and some back exercises,” and that Plaintiff had been  
14 “exercising regularly” and lost 20 pounds in the process. AR 654. Elsewhere in the decision, the  
15 ALJ also pointed out Plaintiff was involved in repairing family houses for selling. AR 22 (citing  
16 AR 582). The ALJ also pointed to Plaintiff’s functional report, in which he stated that his  
17 hobbies included lacrosse, metal work, carpentry, auto work, martial arts, fishing, hunting,  
18 camping, shooting, and riding motorcycles. AR 21–22 (citing AR 221).

19 Plaintiff argues his ability to carry on with his daily activities, such as grocery shopping,  
20 driving, or limited exercise, are impermissible grounds on which to reject his testimony. Dkt. #  
21 20 at 4–5. Plaintiff also argues the ALJ misread Plaintiff’s functional report. *Id.* at 4. The Court  
22 agrees that the ALJ’s reliance on Plaintiff’s functional report was misplaced—while Plaintiff did  
23 state he was interested in the hobbies listed above, he also wrote he rarely does them due to his

1 impairments and reports of pain. *See* AR 221. But the Court disagrees with Plaintiff's  
2 contention that the ALJ impermissibly rejected his testimony based on the other activities the  
3 ALJ listed. Plaintiff did not just partake in limited exercise, as he argues. Dkt. # 20 at 4.  
4 Rather, the record shows he performed them regularly. AR 654. Plaintiff also argues his  
5 functional report states he could perform household chores in limited amount because of his  
6 pain. But "[e]ven if the claimant experiences some difficulty or pain, [the claimant's] daily  
7 activities 'may be grounds for discrediting the claimant's testimony to the extent that they  
8 contradict claims of a totally debilitating impairment.'" *Smartt*, 53 F.4th at 499. Plaintiff's  
9 ability to exercise regularly, perform household chores—even with bouts of pain—and repair  
10 houses for sale, altogether, undermine his testimony that he spends most of his days laying down,  
11 and that he is limited to standing, sitting, and walking for 10 to 20 minutes. Thus, in rejecting  
12 Plaintiff's testimony on this basis, the ALJ did not err.

13 B. Medical Opinion Evidence

14 Plaintiff contends the ALJ erred in rejecting the medical opinion of Michael Slentz, PA-  
15 C. Dkt. # 20 at 7.

16 In a form prepared by Plaintiff's counsel, Mr. Slentz opined Plaintiff is limited to  
17 standing/walking for two hours and sitting for two to four hours during an eight-hour workday.  
18 AR 588. He opined Plaintiff needs to recline for two hours and take one or more unscheduled  
19 breaks of 15 minutes each during an eight-hour workday. *Id.* He also opined that even if  
20 Plaintiff were limited to sedentary work, his impairments would result in absenteeism of three or  
21 more days per month. AR 589.

22 ALJs must consider every medical opinion in the record and evaluate each opinion's  
23 persuasiveness, with the two most important factors being "supportability" and "consistency."

1 *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir. 2022); 20 C.F.R. § 416.920c(a). Supportability  
2 concerns how a medical source supports a medical opinion with relevant evidence, while  
3 consistency concerns how a medical opinion tracks other evidence from medical and nonmedical  
4 sources. *See id.*; 20 C.F.R. § 416.920c(c)(1), (c)(2). Under the new regulations, “an ALJ cannot  
5 reject an examining or treating doctor’s opinion as unsupported or inconsistent without providing  
6 an explanation supported by substantial evidence.” *Woods*, 32 F.4th at 792.

7 Here, the ALJ first rejected Mr. Slentz’s opinion for its lack of supportability. AR 22.  
8 The ALJ noted that when Mr. Slentz’s completed the medical opinion form, he had not actually  
9 examined Plaintiff’s back. *Id.* When considering a medical opinion’s supportability, the ALJ  
10 must look to the medical source’s relevant explanations and objective medical evidence. 20  
11 C.F.R. 416.920c(c)(1). That Mr. Slentz did not perform a back examination the day he  
12 completed the medical opinion form does not by itself detract from his opinion, given that he is  
13 one of Plaintiff’s treating sources and therefore would presumably have other treatment  
14 information that could reasonably support his proposed limitations. *See Garrison v. Colvin*, 759  
15 F.3d 995, 1013 (9th Cir. 2014) (finding that an ALJ errs when rejecting an opinion “based on  
16 [the medical source’s] significant experience with [the claimant] and supported by numerous  
17 records). And though the ALJ did refer to Mr. Slentz’s other examinations throughout the  
18 record—specifically one showing Plaintiff demonstrated a full range of motion— the ALJ’s  
19 reasoning is lacking because the ALJ’s citation was from before Plaintiff’s amended alleged  
20 onset date and thus of limited relevance. *See Carmickle*, 533 F.3d at 1165 (“Medical opinions  
21 that predate the alleged onset of disability are of limited relevance.”); AR 22 (citing AR 408).  
22 Thus, in rejecting Mr. Slentz’s opinion for its lack of supportability, the ALJ erred.

23 The ALJ also rejected Mr. Slentz’s opinion based on its inconsistency with other

1 information. AR 21. This finding is overall reasonable. When considering a medical opinion's  
2 consistency, the ALJ must look to see how consistent it is with evidence from other medical  
3 sources and nonmedical sources in the claim. 20 C.F.R. § 416.920c(c)(2). Here, the ALJ first  
4 highlighted findings from Plaintiff's generally conservative treatment showing decrease in his  
5 reports of pain after his epidural injections. AR 715, 750, 767.

6 The ALJ also contrasted Mr. Slentz's opinion with the opinions Dr. Staley, Dr. Fitterer,  
7 Dr. Robinson, and Dr. Rapp. AR 22. The ALJ's comparison to Dr. Staley's and Dr. Fitterer's  
8 opinions is not entirely convincing since their opinions pre-date Plaintiff's amended alleged  
9 onset date and "[m]edical opinions that predate the alleged onset of disability are of limited  
10 relevance." *Carmickle*, 533 F.3d at 1165. But the ALJ's inconsistency finding is still supported  
11 based on the findings of Dr. Robinson and Dr. Rapp. As stated above, Dr. Robinson's  
12 examination revealed full strength in Plaintiff's extremities and he surmised Plaintiff could  
13 perform work, so long as they were "not terribly demanding physically." AR 725. Dr. Rapp  
14 similarly commented that Plaintiff may "benefit from vocational counseling" even if it were  
15 "unlikely he would be successful with heavy manual labor" given his back issues, and deferred  
16 to Dr. Robinson's input. *See* AR 654.

17 Finally, the ALJ pointed to Plaintiff's ability to exercise regularly and repair houses. AR  
18 21 (citing AR 582, 654). In his Reply, Plaintiff argues his repairs were actually limited to giving  
19 feedback on contractor's work. *See* Dkt. # 30 at 7. "[T]he burden of showing that an error is  
20 harmful normally falls upon the party attacking the agency's determination." *Shinseki v.*  
21 *Sanders*, 556 U.S. 396, 409 (2009). Yet Plaintiff fails to direct to Court to any place in the  
22 record to show this was the extent of his work. Further, "[w]here evidence is susceptible to more  
23 than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Burch v.*



1 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Given Dr. Robinson’s findings, Dr. Rapp’s  
2 observations, and Plaintiff’s reported activities, the ALJ could reasonably find Mr. Slentz’s  
3 opinion inconsistent with the record. Thus, in rejecting his opinion for its inconsistency with the  
4 record, the ALJ did not err.

5 Further, because the ALJ’s inconsistency finding is supported by substantial evidence,  
6 the ALJ’s erroneous supportability finding is rendered harmless. *See Carmickle*, 533 F.3d at  
7 1162 (including an erroneous reason is at most harmless error where an ALJ provides other  
8 reasons supported by substantial evidence).

9 C. Plaintiff’s RFC

10 Plaintiff contends the ALJ erred in assessing his RFC because he based them on medical  
11 opinions that were provided before Plaintiff’s amended alleged onset date. Dkt. # 20 at 6–7.

12 As stated above, “[m]edical opinions that predate the alleged onset of disability are of  
13 limited relevance.” *Carmickle*, 533 F.3d at 1165. But the Court cannot say the ALJ harmfully  
14 erred in the assessment of Plaintiff’s RFC. The RFC incorporates credible limitations supported  
15 by substantial evidence in the record. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th  
16 Cir. 2008). Though Dr. Staley and Dr. Fitterer provided their medical opinions before Plaintiff’s  
17 alleged amended onset date, the ALJ still cited to records from the relevant period in finding  
18 them persuasive. AR 21–22. For example, the ALJ relied on an evaluation and a nerve  
19 conduction study showing Plaintiff did not currently have numbness in his leg, he had full  
20 strength in all four extremities and mostly normal reflexes, though with some reduced sensation.  
21 *See* AR 725, 795. The Court may only reverse the ALJ’s decision if it is “not supported by  
22 substantial evidence in the record *as a whole*.” *Molina*, 674 F.3d at 1110 (emphasis added).  
23 Plaintiff’s records as cited by the ALJ supports Dr. Staley’s and Dr. Fitterer’s findings, therefore

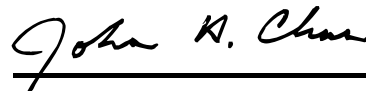
1 the ALJ could reasonably find their opinions consistent and their proposed limitations credible.  
2 See 20 C.F.R. 416.920c(c)(2). Outside their opinions' timing, Plaintiff makes no argument to  
3 show otherwise.

4 Moreover, an ALJ assesses a claimant's RFC "based on *all* of the relevant medical and  
5 other evidence." 20 C.F.R. § 416.945 (emphasis added). Here, in assessing Plaintiff's RFC, the  
6 ALJ also considered Plaintiff's testimony, which the Court has found the ALJ permissibly  
7 rejected. AR 19–22. Thus, the Court finds the ALJ did not err in Plaintiff's RFC assessment.

8 **IV**  
9 **CONCLUSION**

10 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this  
11 case is **DISMISSED** with prejudice.

12 DATED this 29th day of September, 2023.

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15 John H. Chun  
16 United States District Judge  
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